

lute or conditional, although the delivery is made by the grantor directly to the grantee." (Emphasis added)

The Court of Appeals affirmed the decree of the lower court which held that the delivery was conditional and that the condition was not satisfied and that the instruments should be annulled.

In the case of Fike vs. Harshbarger, supra, a deed was executed by Frank Thomas on June 4, 1963, conveying eight acres of land, with improvements, to Wilma Bell Fike, his daughter. Mr. Thomas retained possession of the deed until it came into the possession of Helen Harshbarger, another daughter, about two years before his death on May 23, 1972. Shortly after Mr. Thomas's death, Mrs. Fike learned of the deed of conveyance, and it was obtained by members of the Fike family who had the deed recorded. The personal representative of the estate of Frank Thomas petitioned the Court to have the deed to Mrs. Fike be declared null and void and of no legal effect. The Court found, based upon a note of Mr. Thomas, dated May 12, 1971, stating, "I, Frank Thomas, in sound mind, wish to have the deed changed to go to all of the children. Frank Thomas," that it was the intention of Mr. Thomas that no title should pass under the deed, and that also there was no valid delivery of the deed to the grantee in that Mr. Thomas retained the right to recall the deed.

The Court, citing Gianakos vs. Magiros, 234 Md 14 (1964), stated:

"It is recognized that there has been a consummated delivery when the instrument has passed from the grantor, without right of recall, to the grantee, or to some person for his use."

In Fike, supra, the case of Renehan vs. McAvoy, 116 Md 356 (1911) was cited as authority on the issue of delivery. The Court quoted from the Renehan case, at page 359:

"In Clark vs. Creswell, 112 Md 342, it was held, there is a consummated delivery when the instrument has passed from the grantor, without right of recall, to the grantee or to some third person for his use. The test of delivery is the relinquishment by the grantor of the custody or the control of the deed.